



Office of the Attorney General

State of Texas

November 21, 1996

DAN MORALES

ATTORNEY GENERAL

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR96-2175

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101860.

The City of McAllen Police Department (the "city"), which your office represents, received a request for a variety of information relating to a particular case. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.¹

Initially, we note that through the submitted subpoena duces tecum the requestor asks a number of factual questions. The Open Records Act doesn't require a governmental body to answer factual questions or to perform legal research. Open Records Decision Nos. 555 (1990), 379 (1983), 347 (1982). Therefore, the city is not required by the Open Records Act to answer these factual questions. A governmental body must, however, make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990).

Chapter 552 of the Government Code imposes a *duty* on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general, not later than the tenth calendar day after the date of receiving the written request. Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one

¹The document which you purport to be an open records request, appears to be a subpoena duces tecum seeking certain records and information through questions to be answered by the police department's custodian of records. Since the city has not argued that this request for information, through a subpoena duces tecum, is subject to the Texas Rules of Civil Procedure, we will treat the request pursuant to the Open Records Act.

of the [act's] exceptions . . . *must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added.)

The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302.

The written request for information, by way of the subpoena duces tecum is dated July 17, 1996, however, it appears to have been received by the city on July 28, 1996. You did not request a decision from this office until August 22, 1996, more than ten days after you received the requestor's written request. Therefore, we conclude that the city failed to meet its ten-day deadline for requesting an opinion from this office. Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; see *Hancock*, 797 S.W.2d 379; *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision Nos. 319 (1982), 195 (1978).

This presumption can be overcome only by a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public. See, e.g., Open Records Decision Nos. 195 (1978), 150 (1977). Normally, a compelling interest is demonstrated when some other source of law makes the information confidential or when third party interests are at stake. Open Records Decision No. 150 (1977) at 2. Therefore, in the absence of a compelling interest, you must release the requested information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 101860

Enclosure: Submitted information

cc: Ms. Patty Kohlenberg
Diversified Legal Service
4606 Centerview Drive, No. 257
San Antonio, Texas 78228
(w/o enclosure)